

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of the election of species of atopic dermatitis and topical route of administration in the reply filed on Marcy 17, 2011 is acknowledged. Applicant's arguments are deemed persuasive therefore the requirement for election of species is hereby withdrawn.

The requirement is still deemed proper and is therefore made FINAL.

Any rejection set forth in the previous Office action mail dated February 17, 2010 and not repeated herein is withdrawn.

Claims 61, 62, 70-72, 76, 77, 82, 84, 85 and 91 are under examination.

Claim Objections

Applicant is advised that should claim 61 be found allowable, claim 91 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 61, 62, 70-72, 76, 77, 82, 84, 85 and 91, as amended, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Newly applied as necessitated by amendment.

Each of Claims 61 and 91 recites the limitation "said skin" in line 3. There is insufficient antecedent basis for this limitation in the claims.

The metes and bounds of Claims 61, 71 and 91 are rendered vague and indefinite by "unsaponifiable materials from sunflower oil" because it is unclear as whether the claim-designated plant oil product consists of a one or more unsaponifiable compounds possibly comprising obtained from sunflower oil. For instance, does the claim-designated plant oil product comprise phytosterols, fatty acids, and antioxidants or one or more of the aforementioned constituents? The lack of clarity renders the claims vague and ambiguous.

Claim 70 recites the limitation "between about". The term "between" delineates only numerical values within a set range, whereas the term "about" may be less than or more than the recited value. Because of the conflict of terms, it is unclear which term is limiting; and, therefore, the metes and bound of Claim 70 are rendered vague and indefinite by the limitation.

The metes and bounds of Claims 71 and 72 are rendered uncertain because the percentage amounts of the ingredients are not set forth in terms of

Art Unit: 1655

either "by weight" or "by volume" percentage amount of the total weight amount of the composition. The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

All other cited claims depend directly or indirectly from rejected claims and are, therefore, are also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE FLOOD whose telephone number is (571)272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1655

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Michele Flood
Primary Examiner
Art Unit 1655

MCF
June 5, 2011

/Michele Flood/
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